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March 14, 2011

Via ECF

Honorable Madeline C. Arleo, U.S.M.J.
U.S.D.C. for the District of New Jersey
M.L. King, Jr. Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07101

**Re: *BanxCorp v. LendingTree LLC*, Civ. No. 10-02467-SDW-MCA
BanxCorp v. Bankrate, Inc., Civ. No. 07-03398-SDW-MCA**

Dear Judge Arleo:

We are writing on behalf of Plaintiff BanxCorp to request leave to file a Motion for partial Summary Judgment on liability issues in both of the above actions, based on incontrovertible proof of an illegal contract in restraint of trade under § 1 of the Sherman Act specifically between Bankrate and LendingTree, both clearly indispensable parties.

Plaintiff's proof includes copies of two concurrent contracts dated February 2, 2007, constituting *per se* horizontal market division and customer allocation agreements, and a *per se* horizontal price-fixing agreement between Bankrate and LendingTree as counterparties.¹

Moreover, BanxCorp further wishes to seek relief on the grounds of collusion, due to LendingTree's failure to produce 5,400 documents responsive to an outstanding subpoena, which have been held up *for review* by its counsel since December 15, 2010. It is well settled that if the Court finds that the witness [LendingTree] and a party [Bankrate] acted in collusion, it can decline to treat the witness as a nonparty.² Accordingly, we respectfully request that the Court hold the upcoming LendingTree and Bankrate conferences consecutively on March 29, 2011.

Very truly yours,

s/Lawrence C. Hersh
Lawrence C. Hersh



Mordechai I. Lipkis
Admitted Pro Hac Vice

cc: All counsel of Record

¹ See *BanxCorp v. Bankrate, Inc.*, Doc. Nos. 168 and 169-3; see also Doc. Nos. 70, and 70-1 to 70-4.

² *U.S. Catholic Conf. v. Abortion Rights Mob., Inc.*, 487 U.S. 72 108 S. Ct. 2268, 101 L.Ed.2d 69 (1988).